

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

LAWRENCE B. REW, Guardian)	
ad Litem for JUSTIN LOVE, a)	
minor,)	
)	
Plaintiff,)	CV 02-891-PA
)	
v.)	ORDER
)	
LA GRANDE SCHOOL DISTRICT, et)	
al.,)	
)	
Defendants.)	

PANNER, J.

This action seeks damages on behalf of Justin Love, a minor sexually abused by defendant Jack Mielke in 2000. The latter pled guilty to criminal charges concerning that incident and is now serving a term of imprisonment in the Oregon penitentiary.

Defendant Mielke did not file a responsive pleading to the original Complaint in this action. On November 25, 2002, an order of default was issued. Plaintiff now asks this court to assess compensatory damages against Mielke in the amount of \$1,067,000, and further, to declare that this sum is in addition to all amounts Plaintiff has been paid by any other defendant.

An order of default establishes the defaulting party's liability for the well-pled allegations of the Complaint, but does not establish the amount of damages. Unless the amount of damages is certain, it must be decided by the court. United States v. Gant, 268 F. Supp.2d 29, 32 (D.D.C. 2003). The court has considerable latitude, both in fixing the amount of damages and in the procedures employed. Id.; Fed. R. Civ. P. 55(b)(2).

Although Defendant Mielke has defaulted as to liability, he is entitled to be heard on the issue of damages, if he chooses. Plaintiff shall promptly serve Defendant Mielke with a copy of the Application for Default Judgment and supporting materials, excluding the DVD (the written transcript being sufficient).¹

Defendant Mielke has until **May 23, 2005**, to file a written response to the Application for Default, as it concerns the amount of damages sustained by the Plaintiff as a result of Mielke's conduct. The name of the case and the case number (CV 02-891-PA) must appear at the top of the first page of the response. It should be mailed to:

Clerk
United States District Court
1000 SW Third Avenue
Portland, OR 97204

A copy of the response must be sent to Plaintiff's counsel:

Tichenor Dziuba & Coletti
1100 SW Sixth Avenue, Suite 1450
Portland, OR 97204

¹ Use a binding suitable for receipt at a penitentiary, such as velo-binding or perfect binding, or staple the individual items. Acco fasteners and other sharp objects are not suitable.

In addition, if Mielke desires to be heard orally (via telephone), he shall so inform the court **by May 13, 2005.**

IT IS SO ORDERED.

DATED this 19 day of April, 2005.

A handwritten signature in cursive script, reading "Owen M. Panner", written over a horizontal line.

OWEN M. PANNER
U.S. DISTRICT COURT JUDGE